



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/150748

PRELIMINARY RECITALS

Pursuant to a petition filed July 19, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a telephonic hearing was held on August 15, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has established an overpayment of child care benefits against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is the father of one of A.G.'s children. A. G. has been receiving child care benefits for that child in common, specifically in May 2012.

3. On April 25, 2012, A.G. contacted the consortium and spoke with a DHS agency worker to ask how her benefits would be affected if petitioner was added to her case. She informed the agency that petitioner did not live with her currently but she anticipated that he might soon be homeless. The agency explained FS policy to A.G. See Exhibit 10.
4. On May 1, 2012, A.G. contacted the consortium and spoke with a DHS agency worker. She requested to add petitioner to her case. She submitted a change report. She reported petitioner is unemployed and that he receives unemployment compensation benefits of \$276/week with a child support intercept of \$82. See Exhibits 2 and 10.
5. On May 9, 2012, A.G. contacted the consortium and spoke with a DHS agency worker. She informed the agency that petitioner's unemployment benefits had been discontinued. See Exhibit 10.
6. On May 31, 2012, a referral was submitted to DCF requesting full time authorization for the child in common. The agency processed the referral but was unable to complete the authorizations due to petitioner not being in an approved activity. The agency ended A.G.'s authorizations effective June 2, 2012. See Exhibit 10.
7. On June 4, 2012, DCF completed an overpayment referral. See Exhibit 10.
8. On June 7, 2012, A.G. submitted a letter to remove petitioner from her case. See Exhibit 3. She also submitted a change report indicating that he left the home on June 6, 2012. See Exhibit 3.
9. On February 7, 2013, the agency issued a Child Care Overpayment Notice and worksheet to the petitioner (at [REDACTED] Vliet) and to A.G. informing them of the agency's intent to recoup \$757.11 for an overissuance of child care benefits for the period of May 6 – 31, 2012. See Exhibit 9.
10. On February 12, 2013, A.G. filed an appeal with the Division of Hearings and Appeals.
11. On April 17, 2013 the hearing was held on A.G.'s appeal.
12. On June 11, 2012 the administrative law judge issued Decision No. CCO/147255 upholding the overpayment but remanding the matter to revise the overpayment period and ordered that a new notice be issued accordingly.
13. On June 21, 2013 the agency issued a new Child Care Overpayment Notice and worksheet to the petitioner (at [REDACTED] Vliet) informing him of the agency's intent to recoup \$292.05 for an overissuance of child care benefits for the period of May 20 – 31, 2012. See Exhibit 1.
14. On July 2, 2013 the agency issued Repayment Agreement to petitioner for the overpayment at the address of [REDACTED]. See Exhibit 11.

DISCUSSION

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires county agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. § 49.195(3). This means that even if the agency caused the overpayment, the petitioner will still be "on the hook" for it because s/he received more benefits than s/he was eligible to receive. Therefore, the agency must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover it. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF

101.23(2); See also, *Wisconsin Shares Child Care Assistance Manual*, Ch. 2., available online at <http://dcf.wisconsin.gov/childcare/wishares/>.

The agency found that there was an overpayment of child care when it determined that petitioner was living with A.G. and their child in common, but that he was not in a qualifying activity to qualify for the benefits. See *Child Care Policy Manual (Manual)*, §1.5.0. In a public assistance overpayment case, the agency has the burden of proof. See, e.g., *State V. Hanson*, 98 Wis. 2nd 80 (Wis. App. 1980). The agency's evidence is discussed above and much time was spent by this ALJ going through it post-hearing.

In rebuttal, the petitioner testified that he never lived with A.G. His testimony was that he never lived with her and that the two were never cordial. His testimony was that he was homeless, that he was "here" and "there" and also that he was living with his mother at the [REDACTED] address. It was the repayment agreement received at that address that prompted his appeal. He testified he had no knowledge of A.G.'s actions to place him in her home nor of her appeal. Based on the preponderance of the evidence, I find that he was in the home. A.G. reported him there and provided change reports from which she knew his Social Security Number and the amount he received in unemployment compensation benefits including the amount of the child support intercept. She knew when he was receiving the benefits and when they stopped. Petitioner's vague descriptions of being "here" and "there" do not provide the kind of reliable evidence for me to find otherwise.

Further, since there is a Division of Hearings and Appeals decision that concludes that petitioner was in A.G.'s home can this decision for this case make a different finding? I have looked at this from the prospective of stare decisis, claim preclusion, issue preclusion and privity but am not discussing those concepts here because, ultimately, I am concluding that this is a question of liability and that is addressed by the following Wisconsin Administrative Code provision:

- (3) LIABILITY.** (a) Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. For the purpose of determining liability for an overpayment of a child care subsidy under s. 49.155, Stats., "parent" has the meaning given in s. 49.155 (1) (c), Stats.
- (b) Liability for repayment of an overpayment shall be joint and several.

Wis. Adm. Code, §DCF 101.23(3)(a) and (b).

Given the Division of Hearings and Appeals decision in CCO/147255 concluding that petitioner was in A.G.'s home causing an overpayment of child care benefits paid on behalf of their child in common, given that he is a co-parent, given the Administrative Code provision noted above, and given my finding that he was in the home during the overpayment period, I must conclude that petitioner is also liable for those payments.

CONCLUSIONS OF LAW

The agency has established an overpayment of child care benefits against the petitioner in the amount of \$292.05.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

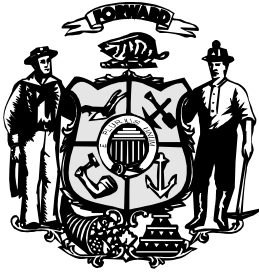
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of September, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoeft, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 26, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud